

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Petition for Waivers Filed by) CC Docket No. 96-45
)
Dickey Rural Telephone Cooperative) AAD 95-72
Dickey Rural Communications, Inc.)
Gilby Telephone Company)
Griggs County Telephone Company)
Moore & Liberty Telephone Company)
North Dakota Telephone Company)
Northwest Communications Cooperative)
Red River Telecom, Inc.)
Turtle Mountain Communications, Inc.)
United Telephone Mutual Aid Corporation)
York Telephone Company)
)
Concerning the Definition of "Study Area" Contained in the)
Part 36 Appendix-Glossary of the Commission's Rules)

RECEIVED

NOV - 5 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Common Carrier Bureau

**REQUEST FOR REMOVAL OF WAIVER CONDITION
CONSISTENT WITH COMMISSION POLICY**

The above-listed companies (collectively, "Petitioners") submit this request for the removal of their respective "caps" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted April 3, 1996, with respect to the Petitioners.¹ The Order authorized the transfer of local exchange facilities consisting of 68 exchanges serving 48,354 access lines into the operations of the Petitioners (and six additional small local exchange carriers). As a condition to the grant of the waivers, the Order imposed a

No. of Copies rec'd 014
List ABCDE

¹ Memorandum Opinion and Order, AAD 95-72, 11 FCC Rcd 10855 (1996) ("Order").

limitation or “cap” on USF disbursements to the Petitioners.² Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,³ the Petitioners request that their individual USF caps be removed as of January 1, 2000.⁴

The Petitioners expect that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau’s newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, the Petitioners respectfully suggest that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, the Petitioners respectfully request expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate

² Order at ¶ 28. Specifically, Dickey Rural Telephone Cooperative and Dickey Rural Communications, Inc. were capped at \$350,780 per annum; Gilby Telephone Company was capped at \$63,716; Griggs County Telephone Company was capped at \$0; Moore & Liberty Telephone Company was capped at \$2,979; North Dakota Telephone Company was capped at \$303,861; Northwest Communications Cooperative was capped at \$171,807; Red River Telecom, Inc. was capped at \$84,313; Turtle Mountain Communications, Inc. and United Telephone Mutual Aid Corporation were capped at \$0; and York Telephone Company was capped at \$0.

³ Memorandum Opinion and Order on Reconsideration, AAD 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 (“Cap Removal Order”). In its Cap Removal Order, the Commission, *inter alia*, granted in part the joint petition filed by five of the fifteen North Dakota companies that originally sought study area waivers.

⁴ Although this Request references an effective date of January 1, 2000, the Petitioners do not waive their right to raise issues in the future with respect to the applicability of the Commission’s policy or rules to prior periods beginning May 8, 1997.

the completion of the USF administration prior to January 1, 2000. In support thereof, the Petitioners submit the following:

I. Background

On May 19, 1995, the Petitioners (together with six additional small local exchange carriers) filed a joint petition for waiver. On April 4, 1996, the Commission released its Order authorizing the transfer of 68 exchanges serving 48,354 access lines from US WEST Communications, Inc. into the Petitioners' operations, subject to the condition that, absent explicit approval from the Bureau, the annual USF support provided would not exceed the estimated post-upgrade amounts specified in the joint petition.⁵ The National Exchange Carrier Association ("NECA") was ordered not to distribute USF payments exceeding the limitation.

In the Order, the Bureau also acknowledged appropriately that

new USF rules, implementing new statutory mandates, are likely to alter the distribution of USF support to high-cost areas and require us to revisit these issues following implementation of the 1996 Act.⁶

The Petitioners expected that over time a long term, rational network cost recovery application would be ultimately resolved consistent with the public interest.⁷ The Year 2000

⁵ Order at ¶ 28.

⁶ Id.

⁷ The Petitioners have invested in plant upgrades in the subject study areas over the past three years in the amounts of \$1,575,002 for Dickey Rural Telephone Cooperative and Dickey Rural Communications, Inc.; \$1,241,477 for Gilby Telephone Company; \$2,517,371 for Griggs County Telephone Company; \$1,766,339 for Moore & Liberty Telephone Company; \$12,940,896 for North Dakota Telephone Company; \$3,513,078 for Northwest Communications Cooperative; \$1,057,550 for Red River Telcom, Inc.; \$4,372,064 for Turtle Mountain Communications, Inc. and United Mutual Aid Corporation; and \$784,443 for York Telephone Company.

USF receipts for Petitioners, based on data forwarded from the Universal Service Administrative Corporation (“USAC”) to the Commission on October 1, 1999 (without the individual caps), would be as follows: \$370,605.60 for Dickey Rural Telephone Cooperative and Dickey Rural Communications, Inc; \$67,788.52 for Gilby Telephone Company; \$69,389.23 for Griggs County Telephone Company; \$33,769.06 for Moore & Liberty Telephone Company; \$567,488.55 for North Dakota Telephone Company; \$213,940.85 for Northwest Communications Cooperative; \$149,076.30 for Red River Telecom, Inc.; \$250,204.86 for Turtle Mountain Communications, Inc. and United Telephone Mutual Aid Corporation; and \$68,300.12 for York Telephone Company. Grant of this request will allow the Petitioners that are average schedule companies to receive USF payments consistent with cost surrogates for average schedule companies, and will allow the Petitioners that are cost study companies to recover fully the USF payments related to the costs incurred in providing service to rural North Dakota.

II. Removal of the Petitioners’ Caps is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 carriers. While the Commission noted its policy of monitoring USF impact on carriers involved in acquisitions and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.⁸ Accordingly, the Commission granted petitioners’ requests to lift the individual caps placed on their high cost

⁸ Cap Removal Order at ¶ 9.

loop support on a going-forward basis.⁹ As of January 1, 2000, the high cost loop support for the 32 carriers will then be based upon their actual combined operations.

The Commission acknowledged that “caps of unlimited duration may hinder petitioners’ incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers.”¹⁰ The Commission also determined that “limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission’s] policies . . .” The Commission “concluded that . . . the individual caps placed on the carriers’ high cost loop support have served their purpose . . .”¹¹ The Commission also recognized correctly that lifting the caps on petitioners’ high cost support will increase the affected LECs’ incentives and ability to extend service to previously unserved areas and upgrade their networks.”¹²

Removal of the Petitioners’ individual USF caps is both warranted by, and consistent with, the Commission’s conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, the Petitioners purchased exchanges several years ago. Following the grant of waiver, the Petitioners proceeded to deploy service and upgrade the facilities according to their plans. Continued application of the individual caps imposed in April

⁹ Cap Removal Order at ¶ 10.

¹⁰ Id.

¹¹ Id.

¹² Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

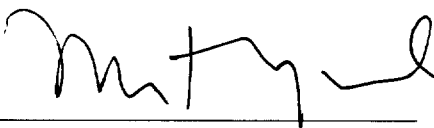
of 1996 would hinder the Petitioners' incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize Petitioners' ability to maintain reasonably comparable rates for modern services.

III. Conclusion

Consistent with the Commission's policy established in its Cap Removal Order, the Petitioners request that the individual USF caps established by the Commission's Order be lifted on a going-forward basis so that, as of January 1, 2000, the average schedule Petitioners' high cost loop support payments will be based upon prevailing average schedule surrogate cost calculations, and the cost company Petitioners' high cost loop support payments will be based upon the average cost of all their respective lines. Adequate USF funding is necessary to allow the Petitioners to continue to maintain and upgrade their facilities for the provision of universal service to rural North Dakota. Expedited grant of this request will serve the public interest by ensuring that the Petitioners receive adequate and consistent universal service funding to recover the costs of their network and thereby meet their current and future service requirements.

Respectfully submitted,

Dickey Rural Telephone Cooperative
Dickey Rural Communications, Inc.
Gilby Telephone Company
Griggs County Telephone Company
Moore & Liberty Telephone Company
North Dakota Telephone Company
Northwest Communications Cooperative
Red River Telecom, Inc.
Turtle Mountain Communications, Inc.
United Telephone Mutual Aid Corporation
York Telephone Company

By 

Stephen G. Kraskin

David Cosson

Margaret Nyland

Their Attorneys

Steven Watkins

Telecommunications Management Consultant

Kraskin, Lesse & Cosson, LLP

2120 L Street, NW, Suite 520

Washington, DC 20037

November 5, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" was served on this 5th day of November, 1999 by hand delivery to the following parties:



Shelley Davis

Larry Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. Room 5-C450
Washington, DC 20554

Lisa Zaina, Acting Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-B303
Washington, DC 20554

Irene Flannery, Chief
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-A426
Washington, DC 20554

Ms. Adrian Wright
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B510
Washington, DC 20036